United Nations

Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996

Fifth session (12-23 February 2001)

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Fifty-sixth session
Supplement No. 37 (A/56/37)

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Note

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Chapter I
Introduction

1. The fifth session of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 was convened in accordance with paragraphs 13 and 14 of Assembly resolution 55/158 of 12 December 2000. The Committee met at Headquarters from 12 to 23 February 2001.

2. In accordance with paragraph 9 of General Assembly resolution 51/210, the Ad Hoc Committee was open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency (IAEA).

3. On behalf of the Secretary-General, the Legal Counsel of the United Nations, Hans Corell, opened the fifth session of the Ad Hoc Committee.

4. At its 19th meeting, on 12 February, the Committee decided to re-elect the same Bureau it had elected at its previous session. Consequently, the Bureau was composed as follows:

Chairman:
Rohan Perera (Sri Lanka)

Vice-Chairpersons:
Carlos Fernando Díaz Paniagua (Costa Rica)
Mohammed Gomma (Egypt)
Cate Steains (Australia)

Rapporteur:
Ivo Janda (Czech Republic)

5. Václav Mikulka, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Ad Hoc Committee. Manuel Rama-Montaldo, Deputy Director of the Division, acted as Deputy Secretary of the Ad Hoc Committee and Secretary to its Working Group. The Codification Division provided the substantive services for the Ad Hoc Committee and its Working Group.

6. At the same meeting, the Ad Hoc Committee adopted the following agenda (A/AC.252/L.9):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the relevant questions referred to in paragraphs 13 and 14 of General Assembly resolution 55/158 of 12 December 2000, in accordance with the mandate of the Ad Hoc committee as set out in that resolution.
6. Adoption of the report.

7. The Ad Hoc Committee had before it the report of its previous session[1] as well as the report of the Working Group on measures to eliminate international terrorism, established by the Sixth Committee at the fifty-fifth session of the General Assembly (A/C.6/55/L.2), which contained a working document submitted and partially revised by India on the draft comprehensive convention on international terrorism as well as written amendments and proposals submitted by delegations in connection with the elaboration of the draft convention. The Committee also had before it written amendments and proposals submitted by delegations during the present session, which are reproduced in annex III to the present report.

Chapter II
Proceedings

8. The Ad Hoc Committee held a general exchange of views at its 19th meeting, on 12 February, on issues within the mandate of the Committee pursuant to paragraphs 13 and 14 of General Assembly resolution 55/158.

9. At its 20th meeting, on 12 February, the Ad Hoc Committee decided to proceed with its work in a Working Group of the Whole.

10. The Working Group proceeded in two stages. In the first it discussed the revised texts of articles 3, 6, 8 and 11, contained in annex I.A to the report of the Working Group of the Sixth Committee on measures to eliminate international terrorism (A/C.6/55/L.2), as well as articles 4, 5, 9, 10, 12 and 13, contained in annex II to the same document.

11. As a result of the discussion in the Working Group, informal consultations coordinated by the Rapporteur were held on articles 4, 6, 8, 10, paragraph 5, and 13, paragraph 3.

12. The report of the Coordinator to the Ad Hoc Committee on the results of the informal consultations is contained in annex VI to the present report.

13. In the light of the results of the informal consultations, the Bureau prepared a discussion paper containing articles 3, 8 and 11 to provide a basis for discussion to the Working Group of the Sixth Committee, which is scheduled to meet during the fifty-sixth session of the General Assembly. The text of the articles is contained in annex I to the present report.

14. The delegation of India prepared, for reference, a text of articles 4, 5, 9, 10, 12 and 13, which is contained in annex II to the present report.

15. In the second stage, the Working Group discussed the revised texts of articles 1 and 2, contained in annex I.A and B to the report of the Working Group of the Sixth Committee, the issue of the definition of terrorism, the issue of the relationship of the draft convention to existing and future instruments on international terrorism as well as the issue of differentiating between terrorism and the right of peoples to self-determination and to combat foreign occupation.

16. An informal summary of the general exchange of views, prepared by the Chairman, is contained in annex V to the present report. The summary is intended for reference purposes only and not as record of the discussions.

17. Annex III to the present report contains a list and the text of the written amendments and proposals submitted by delegations at the present session of the Ad Hoc Committee in connection with the elaboration of a draft comprehensive convention on international terrorism.

18. Annex IV to the present report contains a list of written amendments and proposals submitted by delegations to the Working Group of the Sixth Committee at the fifty-fifth session of the General Assembly in connection with the elaboration of a draft comprehensive convention on international terrorism.

Notes

[1] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 37* (A/55/37).

Annex I

Discussion paper prepared by the Bureau as a basis for discussion in the Working Group of the Sixth Committee at the fifty-sixth session of the General Assembly*

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 6, paragraph 1, or article 6, paragraph 2, of this Convention to exercise jurisdiction except that the provisions of articles 8 and 12 to 16 shall, as appropriate, apply in those cases.

Article 8

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, including, if necessary and where appropriate, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission, within or outside their territories, of those offences, including:

(a) Measures to prohibit the illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the commission of offences set forth in article 2;

(b) In particular, measures to prohibit the establishment and operation of installations and training camps for the commission of offences set forth in article 2.

2. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their national law and coordinating administrative and other measures taken as appropriate to prevent the commission of offences as set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperation with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) the identity, whereabouts and activities of persons in respect of whom there are reasonable grounds to believe that they are involved in such offences;

(ii) the movement of funds, property, equipment or other instrumentalities relating to the commission of such offences.**

3. States Parties may exchange information through the International Criminal Police Organization (Interpol) or other international and regional organizations.

Article 11

1. The State Party in whose territory the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite the person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case, without undue delay, to its competent authorities for the purpose of prosecution through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

* Originally issued as document A/AC.252/2001/CRP.3.

** Some delegations questioned the appropriateness of referring to the movement of funds.

Annex II

Text of articles 4, 5, 9, 10, 12 and 13 prepared by India, for reference*

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5**

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 9

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence referred to in article 2. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 10

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence referred to in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6, paragraph 1, subparagraph (c), or paragraph 2, subparagraph (a), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-

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* Originally issued as document A/AC.252/2001/CRP.4.

** While it is understood that all draft articles remain under discussion until final agreement has been reached on the whole text of the draft convention, several delegations were of the view that, in particular, an agreement on article 5 is linked to an agreement on the scope of the draft convention and the definition of terrorism.

General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraph 1 or 2, and if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 12

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 13

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

3. States Parties which are not bound by a bilateral treaty or arrangement of mutual legal assistance, may, at their discretion, apply the procedure set out in annex II.

Annex III

Written amendments and proposals submitted by delegations at the present session of the Ad Hoc Committee in connection with the elaboration of a draft comprehensive convention on international terrorism*

Country	*Document symbol*	*Subject*
1. Côte d'Ivoire	A/AC.252/2001/WP.1/Rev.1	Revised text of document A/C.6/55/WG.1/CRP.26
2. Chile	A/AC.252/2001/WP.2	Article 6, paragraph 1
3. Romania	A/AC.252/2001/WP.3	Article 1
4. Guatemala	A/AC.252/2001/WP.4	Article 2, paragraph 1
5. South Africa	A/AC.252/2001/WP.5	Article 2, paragraph 1
6. Holy See	A/AC.252/2001/WP.6	Article 10, paragraph 3
7. Pakistan	A/AC.252/2001/WP.7	New article on relationship
8. Hungary	A/AC.252/2001/WP.8	Article 8, paragraph 2, subparagraph b (ii)
9. Austria	A/AC.252/2001/WP.9	Article 8, paragraph 2
10. Hungary	A/AC.252/2001/WP.10	Article 13, paragraph 3

1. Proposal submitted by Côte d'Ivoire (A/AC.252/2001/WP.1/Rev.1)

Revised text of document A/C.6/55/WG.1/CRP.26

First paragraph:

Terrorism means any act or omission, whoever the author or authors, that is intended to inflict terror, that is, fear, panic or serious and profound anguish, upon one or more natural or legal persons, with a view to coercing such persons or persons, in particular the government authorities of a State or an international organization, to take or to refrain from taking some action.

Second paragraph:

Under the provisions of this Convention, acts committed by peoples in their struggle, including armed struggle, against aggression, colonialism and, in brief, foreign occupation shall not be regarded as constituting terrorism, provided that such acts take place in the context of international conventions governing armed conflicts, as well as international humanitarian law.

2. Proposal submitted by Chile concerning article 6, paragraph 1 (A/AC.252/2001/WP.2)

Add the following subparagraph to article 6, paragraph 1:

(d) Preparatory acts for committing the offence were carried out in its territory, even if the offence was committed in another State.

3. Proposal on draft article 1 submitted by Romania (A/AC.252/2001/WP.3)

Add a new paragraph 6 as follows:

"Offence committed on board a vessel" or "on board an aircraft" includes any offence committed on board or against a vessel or any offence committed on board or against an aircraft.

* Originally issued as document A/AC.252/2001/CRP.5.

4. Proposal by Guatemala concerning article 2, paragraph 1 (A/AC.252/2001/WP.4)

Replace subparagraph (b) by the following:

"(b) Serious damage to a place of public use, a State or government facility, a public transportation system, an infrastructure facility, or public or private property not included in these categories; or".

Replace subparagraph (c) by the following:

"(c) Less serious damage to or tampering with property, places ..." (rest of the subparagraph unchanged).

5. Proposal submitted by South Africa concerning article 2, paragraph 1 (A/AC.252/2001/WP.5)

Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally:

(a) Endangers the life, physical integrity or freedom of a civilian or any person not taking an active part in armed conflict; or

(b) Causes serious damage or major economic loss to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility, the environment or natural resources;

when the purpose of the conduct, by its nature or context, is to intimidate a population or section thereof, or to compel a Government or an international organization, to do or abstain from doing any act.

6. Proposal submitted by the Holy See concerning article 10, paragraph 3 (A/AC.252/2001/WP.6)

Add the following subparagraph to paragraph 3:

Subparagraph (b) bis: "be visited by a qualified representative of the alleged offender's religion;".

7. Proposal submitted by Pakistan for a new article on relationship (A/AC.252/2001/WP.7)

Relationship

"Where the provisions of any convention dealing with a specific category of terrorist offences apply to an offence to which the present convention also apply, the former convention shall prevail over the present convention."

8. Proposal submitted by Hungary concerning article 8, paragraph 2, subparagraph (b) (ii) (A/AC.252/2001/WP.8)

Redraft subparagraph (b) (ii) of article 8, paragraph 2, as follows:

The movement of property, equipment or other instrumentalities intended for use in the commission of such offences.

9. Proposal submitted by Austria concerning article 8, paragraph 2 (A/AC.252/2001/WP.9)

Article 8

Replace the chapeau of paragraph 2 with the following:

States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their national law, and by coordinating administrative and other measures, consistent with their respective domestic legal and administrative systems, taken as appropriate to prevent the commission of offences as set forth in article 2, in particular by:

(a) ...

(b) ....

10. Proposal submitted by Hungary concerning article 13, paragraph 3 (A/AC.252/2001/WP.10)

Article 13

If consensus emerges to delete annex II, replace paragraph 3 with the following text:

> "Unless otherwise provided in treaties or other arrangements on mutual legal assistance, the requesting party shall not use information or evidence furnished by the requested party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested party."

Annex IV

List of written amendments and proposals submitted by delegations to the Working Group of the Sixth Committee at the fifty-fifth session of the General Assembly in connection with the elaboration of a draft comprehensive convention on international terrorism

Country	*Symbol*	*Subject*
1. Guatemala	A/C.6/55/WG.1/CRP.1/Rev.1	Additional article provisionally numbered 22 (a)
2. Costa Rica	A/C.6/55/WG.1/CRP.2	New preambular paragraph
3. Costa Rica	A/C.6/55/WG.1/CRP.3	Article 7
4. Colombia	A/C.6/55/WG.1/CRP.4/Rev.1	Article 2, paragraph 1
5. Australia and Belgium	A/C.6/55/WG.1/CRP.5	Article 2, paragraph 1
6. Belgium	A/C.6/55/WG.1/CRP.6	Article 7
7. The Netherlands	A/C.6/55/WG.1/CRP.7	New paragraph 4 to Article 2
8. India	A/C.6/55/WG.1/CRP.8	Revised texts of articles 1, 3, 6 and 11
9. Ukraine	A/C.6/55/WG.1/CRP.9	Article 1, paragraph 3
10. Germany	A/C.6/55/WG.1/CRP.10	Article 8, chapeau and lit. (a)
11. Austria, Belgium and Switzerland	A/C.6/55/WG.1/CRP.11	Article 14
12. Angola	A/C.6/55/WG.1/CRP.12/Rev.1	Article 8
13. Lebanon	A/C.6/55/WG.1/CRP.13	Article 2
14. Germany	A/C.6/55/WG.1/CRP.14	Article 3
15. Bolivia, Chile, Costa Rica and Ecuador	A/C.6/55/WG.1/CRP.15	Article 2
16. United Kingdom of Great Britain and Northern Ireland	A/C.6/55/WG.1/CRP.16	New article
17. India	A/C.6/55/WG.1/CRP.17	Revised text of article 8
18. Sudan	A/C.6/55/WG.1/CRP.18	Articles 2 and 3
19. Syrian Arab Republic	A/C.6/55/WG.1/CRP.19	Article 6, paragraph 2 (d) (A/C.6/55/WG.1/CRP.8)
20. Lebanon	A/C.6/55/WG.1/CRP.20	Article 6, paragraph 2 (A/C.6/55/WG.1/CRP.8)
21. Cameroon	A/C.6/55/WG.1/CRP.21	Article 11, paragraph 1
22. Sri Lanka and Turkey	A/C.6/55/WG.1/CRP.22 and Corr.1	Article 7
23. Draft report of the Working Group	A/C.6/55/WG.1/CRP.23 and Add.1-3	
24. Syrian Arab Republic	A/C.6/55/WG.1/CRP.24	Article 11, paragraph 2 (A/C.6/55/WG.1/CRP.8)

Country	*Symbol*	*Subject*
25. Cameroon	A/C.6/55/WG.1/CRP.25	Article 6, paragraph 2 (A/C.6/55/WG.1/CRP.8)
26. Côte d'Ivoire	A/C.6/55/WG.1/CRP.26	Article 1
27. Switzerland	A/C.6/55/WG.1/CRP.27	New preambular paragraph
28. New Zealand and Switzerland	A/C.6/55/WG.1/CRP.28	Article 18, paragraph 2
29. Switzerland	A/C.6/55/WG.1/CRP.29	Article 7
30. Malaysia on behalf of the OIC Group	A/C.6/55/WG.1/CRP.30	Articles 1 and 2
31. Switzerland	A/C.6/55/WG.1/CRP.31	Article 2, paragraph 1
32. Austria	A/C.6/55/WG.1/CRP.32	Article 2, paragraph 1
33. Nigeria	A/C.6/55/WG.1/CRP.33	Article 2, paragraph 1
34. Angola	A/C.6/55/WG.1/CRP.34	Article 1
35. India	A/C.6/55/WG.1/CRP.35	Article 2
36. Qatar	A/C.6/55/WG.1/CRP.36	Article 18
37. Lebanon and Syrian Arab Republic	A/C.6/55/WG.1/CRP.37	New preambular paragraphs
38. Lebanon and Syrian Arab Republic	A/C.6/55/WG.1/CRP.38	Articles 1 and 18

Annex V

Informal summary of the general exchange of views, prepared by the Chairman

1. All delegations reiterated their unequivocal condemnation of terrorism in all its forms and manifestations. It was emphasized that terrorism was undermining fundamental human rights and posed a global threat to international peace and security and to the stability of States. It was stressed that all acts of terrorism, regardless of motive or origin, were criminal and unjustifiable.

2. Delegations highlighted the importance of strengthening international cooperation for combating terrorism, in particular through the establishment of an effective international legal regime in this field. It was pointed out that such cooperation should be conducted in conformity with the Charter of the United Nations, basic principles of international law, human rights and humanitarian law. Various activities aimed at combating terrorism at the national, regional and international levels, including those of a legal nature, were reported. The important role and achievements of the Sixth Committee and the Ad Hoc Committee in this field on the basis of the sectoral approach thus far adopted by the Committees were underscored. States were urged to take appropriate steps with a view to becoming parties to the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism, as well as to other counter-terrorism instruments, so as to strengthen the effectiveness of the international legal regime against terrorism. It was also highlighted that the Committee's work on the elaboration of a comprehensive convention on international terrorism would further contribute to combating the scourge of terrorism.

A. Elaboration of a draft international convention for the suppression of acts of nuclear terrorism

3. Some delegations called for a speedy finalization of a consensus text of the draft international convention for the suppression of acts of nuclear terrorism and for an early conclusion of such a convention. Delegations were urged to continue their efforts aimed at finding broadly acceptable solutions as regards the remaining issues of the scope of the convention. It was pointed out that the text should also contain provisions dealing with the dumping of radioactive wastes. Support was expressed for further informal consultations on the topic under the guidance of the coordinator of the consultations.

B. Question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations

4. Several delegations reiterated their support for the proposal to convene a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. Some delegations expressed their readiness to participate in the discussion of this proposal insofar as it could lead to a strengthening of international cooperation in combating international terrorism. Other delegations pointed out that the objectives and possible outcomes of such a conference should first be carefully studied. A point was made that it might be preferable to consider holding a conference of that nature after the completion of the negotiations on the comprehensive convention on international terrorism in order to, inter alia, promote its universal acceptance and implementation, together with sectoral conventions in the area. A view was expressed that the proposed conference should result in the preparation of a clearly defined text instrumental in resolving problems related to terrorism in all its forms and manifestations.

C. Elaboration of a draft comprehensive convention on international terrorism

5. Delegations underscored the importance of the work of the Ad Hoc Committee on the elaboration of a comprehensive convention on international terrorism. It was pointed out that the goal of the adoption of the

convention would be to strengthen the international legal framework in the fight against terrorism in all its forms and manifestations and, consequently, the Ad Hoc Committee and the Working Group of the Sixth Committee should elaborate an effective, comprehensive and universally accepted instrument for cooperation and coordinated action by States in the prevention and punishment of this scourge.

6. The text of the draft convention produced by the sponsor delegation and its revised draft articles were considered as a good basis for discussion. It was stressed that, although significant progress was achieved during the discussion of the draft in the Working Group of the Sixth Committee at the fifty-fifth session of the General Assembly, several important issues to be addressed in the convention were still outstanding. Delegations stressed, in particular, the importance of reaching consensus on such key provisions of the draft convention as its scope, definitions and the relationship of the comprehensive convention to other anti-terrorism conventions.

7. Some delegations underscored the importance of including in the convention a definition of terrorism as a necessary condition for the usefulness and applicability of the convention. The point was made that, in elaborating the definition, focusing first on common legal notions about terrorism which is the conduct to be prohibited under the comprehensive convention would facilitate coming to an agreement on the more contentious issues.

8. The ideas expressed in the preceding paragraph were discussed further in the Working Group. Support was expressed by some delegations for the proposal contained in document A/C.6/55/WG.1/CRP.30, which called for the inclusion of definitions of the terms "terrorism" and "terrorist crime". The delegation that had introduced the proposal, on behalf of the Organization of the Islamic Conference Group, indicated that those essential definitions were based on General Assembly resolution 46/51 of 9 December 1991 and on the Convention of the Organization of the Islamic Conference on Combating International Terrorism. The point was made in the Working Group that the proposal constituted a good basis for discussion because it generalized not only some of the acts described in article 2, but also other acts not covered by that article.

9. However, other delegations in the Working Group expressed their reluctance to accept the proposal contained in document A/C.6/55/WG.1/CRP.30. According to those delegations a definition of terrorism was not required because article 2 already provided an operational definition, especially with the use of the phrase "within the meaning of this Convention". The approach of defining the conduct of a terrorist act had been successfully employed in the sectoral anti-terrorism conventions. Nonetheless, they pointed out that in order to accommodate some of the concerns expressed, a suggestion was made to redraft article 2 so as to indicate more clearly that the phrase "within the meaning of this Convention" referred to terrorist acts. It was also observed that most of the elements of the proposal contained in document A/C.6/55/WG.1/CRP.30 were repetitive since they could be found in article 2 of the revised Indian draft and that any new elements could be incorporated therein. It was stated that, in accordance with the practice in treaties, article 1 should contain only the definition of words that are used subsequently, which was not the case with the term "terrorism".

10. In the general exchange of views, some delegations stressed that the definition of terrorism must clearly differentiate between terrorism and the legitimate struggle in the exercise of the right to self-determination and independence of all peoples under foreign occupation. Mention was made in this connection of some written proposals submitted to the Working Group of the Sixth Committee during the fifty-fifth session of the General Assembly.

11. Other delegations made the point that the legal description of terrorism should be centred on the usual purpose of terrorism, which is to produce fear in the population or to force a Government or an international organization to take or refrain from taking some action. It was also stated that if a particular conduct fit the legal description of the crime of terrorism, it should constitute terrorism regardless of the authors or perpetrators. The view was expressed that the definition of terrorism should extend to an attempt to commit terrorist acts and that terrorist acts should not be differentiated on the basis of their scale or damage.

12. The ideas reflected in the preceding two paragraphs were discussed further in the Working Group in connection with the consideration of the suggestion to add a fifth paragraph to article 2, as contained in the second part of the proposal contained

in document A/C.6/55/WG.1/CRP.30, which is reproduced in annex III to the draft report of the Working Group of the Sixth Committee (A/C.6/55/L.2). Under the terms of this proposal, peoples' struggle, including armed struggle against foreign occupation, aggression, colonialism and hegemony, aimed at liberation and self-determination in accordance with the principles of international law, should not be considered a terrorist crime.

13. Speaking in favour of the proposal, some delegations in the Working Group stressed that the legitimacy of the armed struggle contemplated therein had been reaffirmed by various General Assembly resolutions, such as resolution 46/51. A view was also expressed that the right to self-determination had reached the status of jus cogens in international law. Both article 12 of the 1979 International Convention against the Taking of Hostages and preambular paragraph 7 of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, it was said, constituted relevant precedents for this proposal as were also some provisions contained in regional conventions such as the 1998 Arab Convention on the Suppression of Terrorism, the 1999 Convention of the Organization of the Islamic Conference on Combating International Terrorism and the 1999 Organization of African Unity Convention on the Prevention and Combating of Terrorism. These delegations also noted in the Working Group that the phrase "in accordance with the principles of international law" contained in the proposal provided an adequate safeguard against abusive invocation of the proposed new paragraph. Furthermore, the view was also expressed in the Working Group that the proposed new paragraph was necessary in order to maintain the balance within the comprehensive convention, particularly taking into account the inclusion in the draft of article 18, paragraph 2, on exclusion of the activities of the armed forces. In the view of these delegations, peoples involved in a legitimate armed struggle were entitled to fight, by whatever means, including those that would not be condoned by the occupying Power.

14. Other delegations in the Working Group expressed objections to the proposal. In their view, the peoples' right to struggle to which the proposal referred, while legitimate and accepted under international law as such, could not be carried out by whatever means necessary, but only within the confines of the rules of armed conflict. In the view of these delegations there was a difference between the existence of the right and the manner in which the right was to be carried out. They could not accept legitimate armed struggle as an exception to the laws of armed conflict. In their view, the proposal would be likely to undermine the existing rules on armed conflict by creating a loophole in the application of the fourth Geneva Convention, in violation of article 41 of the Vienna Convention on the Law of Treaties. These delegations further stressed in the Working Group that in the case of armed struggle, the first Protocol to the Geneva Conventions applies, of which article 51 states that attacks on the civilian population are prohibited. It was also noted in the Working Group that the approach of article 12 of the 1979 convention against the taking of hostages was not to provide an exemption, but rather to exclude the question of legitimate struggles from the scope of the convention in question. In the view of these delegations the comprehensive convention was not the proper instrument for contemplating the question of peoples' legitimate struggle, which should be dealt with in the context of international humanitarian law. They stressed that international humanitarian law applied to all combatants and that the blurring of the distinction between combatants and civilians was unacceptable.

15. In the general exchange of views, some delegations were of the view that the definition of terrorism must necessarily cover acts of State-sponsored terrorism as well as acts of State terrorism, in particular, acts of military and paramilitary personnel. Other delegations noted that, while acts of State-sponsored terrorism may fall under the convention, other State conduct, sometimes referred to as "State terrorism", was subject to a separate body of norms, such as the norms applicable to State responsibility and the use of armed force under Article 2, paragraph 4, and Chapter VII of the Charter of the United Nations. Therefore they concluded that consideration of such conduct belonged in other forums and fell outside the scope of the convention.

16. In connection with the possible relationship to be established between the comprehensive convention and the sectoral conventions already adopted, some delegations underscored the importance of preserving the sectoral conventions on specific forms of terrorism and the need for the comprehensive convention to be elaborated on the basis of a holistic and comprehensive

approach in terms of its content and scope. Some delegations emphasized that the comprehensive convention should avoid creating legal overlaps with the existing body of anti-terrorism conventions and should represent an added value in relation to the sectoral conventions by increasing their efficiency. It was further stressed by some delegations that the comprehensive convention as a legal instrument dealing with any forms of terrorism should be flexible and consistent with other anti-terrorism conventions.

17. The Working Group discussed several proposals on the question of the relationship of the draft convention with the existing sectoral conventions on international terrorism (see A/C.6/55/WG.1/CRP.1/Rev.1, A/C.6/55/WG.1/CRP.7, A/C.6/55/WG.1/CRP.16 and A/C.6/55/WG.1/CRP.31). General support was expressed in the Working Group for the inclusion of a provision clarifying the convention's relationship with existing sectoral conventions, primarily to ensure legal certainty in the application and interpretation of both the comprehensive and sectoral conventions.

18. It was observed in the Working Group that essentially two approaches could be adopted on the issue: (a) the "last in time" rule, as expounded in article 30 of the Vienna Convention on the Law of Treaties, would apply and thereby the comprehensive convention, once in force, would supersede previous conventions to the extent that it overlapped in substance with such conventions; or (b) the existing sectoral conventions on international terrorism would be viewed as *lex specialis*, and would hence remain applicable in cases where the acts in question fell within their respective purviews. It was remarked that it had to be clarified whether the draft convention under consideration was to be merely complementary or whether it would be comprehensive in nature. At the same time, it was pointed out that the question of relationship could be finalized only once the rest of the convention had been agreed upon.

19. Support was expressed in the Working Group for the view that, in cases of conflict, the comprehensive convention would prevail. It was also suggested that for the draft convention under consideration to be truly "comprehensive" it would have to be structured in the form of an "umbrella" or framework convention. Support was also expressed for extending the provisions of the comprehensive convention to existing international terrorism conventions. This was particularly important in the context of providing a general definition of terrorism that would apply equally to acts covered by existing sectoral conventions.

20. Other delegations in the Working Group expressed disagreement with having the comprehensive convention supersede existing conventions. It was pointed out that it had not been the intention of the General Assembly, in including the elaboration of a draft comprehensive convention in the Ad Hoc Committee's mandate, to merely do away with existing sectoral conventions. Instead, the mandate of the Ad Hoc Committee referred to the comprehensive convention's being part of "a comprehensive legal framework of *conventions* dealing with international terrorism" (emphasis added). Furthermore, having the same acts covered by both the comprehensive and respective sectoral conventions could create a disincentive to ratify the sectoral treaties. Likewise, it was considered prudent to retain the primacy of the sectoral conventions since they included specific and more elaborate provisions on the acts in question, for example in the field of civil aviation and maritime safety, which were not included in the comprehensive convention. It was also stated in the Working Group that it would not be acceptable to have the comprehensive convention retroactively amend existing sectoral conventions, thereby extending to them provisions, such as the proposed "depoliticization" clause in draft article 14 or the military forces exemption in draft article 18, paragraph 2, which had not been included at the time of their adoption. Any such retroactive amendment would result in inconsistencies with existing national legislation, and could lead to confusion at the bilateral level. It would also introduce unnecessary complexity by, for example, imposing an identical regime for extradition to treaties which contained different jurisdictional bases. Furthermore, it was pointed out that some "gaps" in the sectoral conventions were there on purpose, and should as such not be covered by the comprehensive convention.

21. Some delegations in the Working Group expressed a preference for retaining the *acquis* of previous conventions, while at the same time assigning to the comprehensive convention the complementary role of covering issues not dealt with in existing sectoral conventions. In their view, the added value of the comprehensive convention would thus relate primarily to its effectiveness in filling in the "gaps" in

the existing legal framework of conventions, such as in the case of terrorist assassinations. Further innovations in the comprehensive convention included the expansion of its scope to cover threats of acts of terrorism as well as certain preparatory acts which were not provided for in some of the sectoral instruments.

22. In the general exchange of views, the view was expressed that the applicability of the various aspects of the prosecute-or-extradite regime in the convention must comply with the important principles of international law, such as human rights, international humanitarian law and State sovereignty. It was further stated that it would be necessary to exercise a cautious approach to the exceptions in the convention with regard to national liberation movements and military forces.

Annex VI

Report of the coordinator on the results of the informal consultations*

1. Within the informal consultations held on 14 February 2001 and 21 February 2001, discussion focused on articles 6 and 8, on the basis of their revised texts prepared by India and contained in A/C.6/55/L.2, and on articles 4, 10, paragraph 5, and 13, paragraph 3, on the basis of the working document submitted by India on the draft comprehensive convention on international terrorism, also contained in A/C.6/55/L.2.

2. Article 4 was discussed in the light of an oral proposal made by one delegation, according to which a reporting mechanism obliging States Parties to notify the Secretary of legislative measures taken for implementation of the present convention would be incorporated into article 4. The prevailing feeling was that such a reporting mechanism would duplicate the existing system contemplated by General Assembly resolution 49/60 and a decision was therefore made not to include this proposal in article 4.

3. With respect to article 6, the oral proposal was made by one delegation to add reference to the offence being committed "against" the vessel to the current wording of subparagraph 1 (b). This proposal was supported by some delegations. The prevailing feeling, however, was that the suggested word "against" is already implied in the words "on board a vessel" of the current wording of subparagraph 1 (b). In this connection, a written proposal was also made by one delegation according to which the problem of interpretation of the words "on board a vessel" could be dealt with within article 1 of the draft convention (A/AC.252/2001/WP.3). It was agreed that consideration of this issue would need to be continued at the next session of the Working Group of the Ad Hoc Committee. Also with respect to article 6, a written proposal was made to add a new subparagraph to paragraph 1 to provide for jurisdiction in cases where preparatory acts are carried out in one State and the offence is committed in another. The proposal was not supported by delegations because the case to which it referred was considered to be included in paragraph 1 (a), in line with article 2 of the draft, which penalizes the various degrees of commission of an offence. On this understanding, the proposal was withdrawn by the submitting delegation.

4. Views were expressed in respect of subparagraph 2 (b). Some delegations supported the text of 2 (b) in its current form, while many other delegations questioned the exact meaning of the words "effects of the conduct" and "intended effects". A number of delegations were of the view that the content of subparagraph 2 (b) is already covered by subparagraph 1 (a), and in this connection, the coordinator proposed to transfer 2 (b) to 1 (a). Although this proposal was supported by some delegations, other delegations were of the view that such a step would create more difficulties than it would resolve. It was observed that difficulties over subparagraph 2 (b) were of a conceptual character and it was suggested that further discussion on this provision and perhaps also some other drafting efforts were necessary.

5. As regards subparagraph 2 (e), some delegations found it superfluous since it would be covered by article 2. Some delegations also suggested that the words "in an attempt to compel" should be replaced with words reflecting the purpose of the offence, bringing it into line with article 2. Owing to time constraints the alternative proposal contained in document A/C.6/55/WG.1/CRP.19 could not be discussed, and it was agreed that it would be considered at the next session of the Working Group of the Ad Hoc Committee.

6. With regard to subparagraph 2 (f), a short discussion on proposals made in the Working Group was undertaken and one delegation expressed its flexibility in regard to its proposal. It was agreed that further discussion on this provision would be held at the next session of the Working Group of the Ad Hoc Committee.

7. As far as article 8 is concerned, in its paragraph 1, for the purpose of a future revised text, it was decided to delete the words "and areas under their jurisdiction" in the chapeau of paragraph 1, to invert the order of (i) and (ii) and to start the second subparagraph (according to the agreed reversed order) with the words "in particular".

* Originally issued as document A/AC.252/2001/CRP.8.

8. As regards paragraph 2, one delegation suggested that the whole paragraph should be transferred to article 13. This proposal was supported by a number of delegations. The prevailing view, however, was in favour of retaining paragraph 2 of article 8. Some delegations questioned the value of subparagraph (b) since, in their opinion, it does not deal with prevention offences and, in this connection, subparagraph (b) (ii), in particular, was criticized. Other delegations agreed with (ii) in its current form. One delegation submitted an alternative proposal on (ii) (A/AC.252/2001/WP.8), which was supported by all delegations. For the purpose of another revised text it was decided to merge this alternative proposal with the revised text contained in A/C.6/55/L.2 and to add a footnote expressing strong objections of some delegations to the words "the movement of funds" in this provision. In (i) of subparagraph (b) it was decided to replace the word "suspicion" by the word "ground" and to adjust the wording of this provision accordingly.

9. As regards paragraph 3, it was agreed to insert the words "international or regional organizations" to the text.

10. With respect to article 10, paragraph 5, a representative of the International Committee of the Red Cross (ICRC) was invited to explain the role of the Committee in the context of anti-terrorist conventions. All delegations found his statement interesting and enlightening. However one delegation expressed its preference not to conclude the debate on this issue and to come back to it at a later stage when it has further studied the proposed role of ICRC in the light of the statement of the representative of ICRC. The said delegation indicated, in particular, that ICRC, as a humanitarian institution working in the field of international humanitarian law, did not and should not have any role in the drafting of an anti-terrorism instrument, since international humanitarian law had a different field of application than the scope of the draft convention, as had already been pointed out in article 18 therein. The same delegation stated that the role envisioned for ICRC in the context of the draft convention was likely to cause misunderstandings and confusions with regard to the position of terrorists as criminals.

11. The main purpose of discussion on article 13, paragraph 3, within informal consultations consisted of examining the proposal submitted by one delegation (A/AC.252/2001/WP.10), according to which the current paragraph 3 would be replaced by a new text corresponding to article 12, paragraph 3, of the International Convention on the Suppression of the Financing of Terrorism (the so-called "specialty clause"). The proposal was supported by some delegations. Other delegations recognized its merits but nevertheless mentioned their preference not to have any specialty clause in a comprehensive convention. The view was also expressed that this new paragraph 3 would contradict paragraph 2 of the current text. A number of delegations were also of the view that it was impossible to make any final conclusion in this respect until the fate of annex II is decided. It was agreed that further consideration of this proposal would be needed at the next session of the Working Group of the Ad Hoc Committee.

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